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5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF WASHINGTON

7 ROBERT GENE DaVALLE,  
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Petitioner,  
  
v.  
  
STATE OF WASHINGTON,  
  
Respondent.

NO: 4:19-CV-5061-TOR

ORDER SUMMARILY DISMISSING  
HABEAS PETITION

Petitioner, a prisoner at the Coyote Ridge Corrections Center, brings this *pro se* Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254. The \$5.00 filing fee has been paid.

**PROPER RESPONDENT**

An initial defect with the Petition is that it fails to name a proper party as a respondent. The proper respondent in a federal petition seeking habeas corpus relief is the person having custody of the petitioner. *Rumsfeld v. Padilla*, 542 U.S. 426 (2004); *Stanley v. Cal. Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994). If the

1 petitioner is incarcerated, the proper respondent is generally the warden of the  
2 institution where the petitioner is incarcerated. *See Ortiz-Sandoval v. Gomez*, 81 F.3d  
3 891 (9th Cir. 1996). Failure to name a proper respondent deprives federal courts of  
4 personal jurisdiction. *See Stanley*, 21 F.3d at 360.

### 5 **EXHAUSTION REQUIREMENT**

6 Petitioner challenges his 2018 Benton County guilty plea and sentence for two  
7 counts of child molestation in the first degree. He was sentenced to 67 months  
8 incarceration. Petitioner indicates that he filed no direct appeal and no other  
9 petitions, applications or motions concerning this judgment of conviction in any state  
10 court. ECF No. 1 at 3.

11 In his grounds for relief, Petitioner argues that the State of Washington has no  
12 jurisdiction to decide federal constitutional matters. ECF No. 1 at 5-12. It has long  
13 been settled that state courts are competent to decide questions arising under the U.S.  
14 Constitution. *See Baker v. Grice*, 169 U.S. 284, 291 (1898) (“It is the duty of the  
15 state court, as much as it is that of the federal courts, when the question of the validity  
16 of a state statute is necessarily involved, as being in alleged violation of any  
17 provision of the federal constitution, to decide that question, and to hold the law void  
18 if it violate that instrument.”); *see also Worldwide Church of God v. McNair*, 805  
19 F.2d 888, 891 (9th Cir. 1986) (holding that state courts are as competent as federal  
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1 courts to decide federal constitutional matters). Therefore, Petitioner’s arguments  
2 to the contrary lack merit.

3       Additionally, before a federal court may grant habeas relief to a state prisoner,  
4 the prisoner must exhaust the state court remedies available to him. 28 U.S.C. §  
5 2254(b); *Baldwin v. Reese*, 541 U.S. 27 (2004). Exhaustion generally requires that  
6 a prisoner give the state courts an opportunity to act on his claims before he presents  
7 those claims to a federal court. *O’Sullivan v. Boerckel*, 526 U.S. 838 (1999). A  
8 petitioner has not exhausted a claim for relief so long as the petitioner has a right  
9 under state law to raise the claim by available procedure. *See id.*; 28 U.S.C. §  
10 2254(c).

11       To meet the exhaustion requirement, the petitioner must have “fairly  
12 present[ed] his claim in each appropriate state court (including a state supreme court  
13 with powers of discretionary review), thereby alerting that court to the federal nature  
14 of the claim.” *Baldwin*, 541 U.S. at 29; *see also Duncan v. Henry*, 513 U.S. 364,  
15 365–66 (1995). A petitioner fairly presents a claim to the state court by describing  
16 the factual or legal bases for that claim and by alerting the state court “to the fact  
17 that the . . . [petitioner is] asserting claims under the United States Constitution.”  
18 *Duncan*, 513 U.S. at 365–366; *see also Tamalini v. Stewart*, 249 F.3d 895, 898 (9th  
19 Cir. 2001) (same). Mere similarity between a claim raised in state court and a claim  
20 in a federal habeas petition is insufficient. *Duncan*, 513 U.S. at 365–366.

1 Furthermore, to fairly present a claim, the petitioner “must give the state  
2 courts one full opportunity to resolve any constitutional issues by invoking one  
3 complete round of the State’s established appellate review process.” *O’Sullivan*,  
4 526 U.S. at 845. Once a federal claim has been fairly presented to the state courts,  
5 the exhaustion requirement is satisfied. *See Picard v. Connor*, 404 U.S. 270, 275  
6 (1971). It does not appear from the face of the Petition or the attached documents  
7 that Petitioner has exhausted his state court remedies as to each of his grounds for  
8 relief. Indeed, Petitioner affirmatively represents that he did not exhaust his state  
9 court remedies.

#### 10 **GROUND FOR FEDERAL HABEAS RELIEF**

11 Petitioner asserts that the Washington state constitution contradicts the federal  
12 constitution regarding the Fifth Amendment right to “presentment or indictment of  
13 a Grand Jury.” He claims “no bill of indictment” was brought against him rendering  
14 his arrest, conviction and imprisonment illegal.

15 Petitioner seems to argue that because the state courts have defied “federally  
16 established procedures and processes for the adjudication of crimes” only “a court  
17 of federal jurisdiction” has jurisdictional authority over his claims. His bald  
18 assertion that “due process of the law was ignored” is unsupported by his factual  
19 allegations.

20 The United States Supreme Court stated long ago: “Prosecution by

1 information instead of by indictment is provided for by the laws of Washington.  
2 This is not a violation of the Federal Constitution.” *See Gaines v. State of*  
3 *Washington*, 277 U.S. 81, 86 (1928). Consequently, Petitioner’s assertions to the  
4 contrary presented in his four grounds for federal habeas relief are legally frivolous.

5 Because it plainly appears from the petition and the attached exhibits that  
6 Petitioner is not entitled to relief in this Court, **IT IS ORDERED** the petition, ECF  
7 No. 1, is **DISMISSED** pursuant to Rule 4, Rules Governing Section 2254 Cases in  
8 the United States District Courts.

9 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,  
10 enter judgment, provide copies to Petitioner, and close the file. The Court certifies  
11 that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be  
12 taken in good faith, and there is no basis upon which to issue a certificate of  
13 appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate of  
14 appealability is therefore **DENIED**.

15 **DATED** May 14, 2019.



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A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE  
Chief United States District Judge